

General Information Letter: Nonresident individual is granted permission to claim on his individual return a credit for tax paid on his behalf on a composite return.

July 25, 2006

Dear:

This is in response to the letter from your firm dated June 5, 2006, in which you request a ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

In your letter you have stated the following:

This letter is written on behalf of my clients, Mr. and Mrs. Z, taxpayer ID XXX-XX-XXXX and XXX-XX-XXXX respectively. Illinois income tax was originally paid on COMPANY LLP's Composite Return, Form IL-1023-C for this taxpayer for the year 2004. However, the taxpayer has additional information that must be included on his 2004 return.

We formally request written permission for our clients to include their portion of tax paid on Form IL-1023-C for the period 2004 on line 17 of their 2004 IL-1040 personal tax return.

The income reported on the composite return was from July 1, 2003 through June 30, 2004. Of this period, the income attributable to the period January 1, 2004 through June 30, 2004 resulted in a gain, however income from the period for July 1, 2003 through December 31, 2003 resulted in a loss. As a result no tax was attributable to the period ending December 31, 2003 and all the tax on the 2004 return was attributable to the income earned from January 1, 2004 through June 30, 2004.

In our telephone conversation of July 24, 2006, you clarified the request by explaining that Mr. Z was a partner in COMPANY LLP until December of 2004. As a result of the termination of his partnership, his 2004 federal adjusted gross income included his share of the partnership's income for its taxable year ending June 30, 2004, and also his share of its loss for the period from July 1, 2004, through the termination of his partnership in December. The Zs had no source of Illinois income other than the partnership. Accordingly, if the Zs had filed their own individual income tax return with Illinois, their liability would have been smaller than the amount paid on their behalf on the composite return of the partnership. Because all of their positive Illinois income was reported on the composite return, the Zs have not yet filed an individual Illinois income tax return.

Response

Section 502(f) of the Illinois Income Tax Act (35 ILCS 5/502) provides:

The Department may promulgate regulations to permit nonresident individual partners of the same partnership, nonresident Subchapter S corporation shareholders of the same Subchapter S corporation, and nonresident individuals transacting an insurance

business in Illinois under a Lloyds plan of operation, and nonresident individual members of the same limited liability company that is treated as a partnership under Section 1501 (a)(16) of this Act, to file composite individual income tax returns reflecting the composite income of such individuals allocable to Illinois and to make composite individual income tax payments. The Department may by regulation also permit such composite returns to include the income tax owed by Illinois residents attributable to their income from partnerships, Subchapter S corporations, insurance businesses organized under a Lloyds plan of operation, or limited liability companies that are treated as partnership under Section 1501 (a)(16) of this Act, in which case such Illinois residents will be permitted to claim credits on their individual returns for their shares of the composite tax payments.

Under this authority, the Department has promulgated 86 Ill. Admin. Code Section 100.5100(e), which states:

Nonresident individuals, trusts, and estates with Illinois source income other than from a partnership, S Corporation, or Lloyd's plan of operation may, but need not, be included in a composite return. If such nonresidents are included in a composite return, they will not be permitted to claim credits on their individual returns for their shares of the composite tax payments unless the authorized agent files a petition with the Department of Revenue requesting permission for the nonresidents to claim such credit and the petition is granted. The Department shall grant the petition if the authorized agent clearly demonstrates that no other method of filing would achieve the same degree of compliance and administrative ease for both the Department and the taxpayers. Factors to be considered will be the same as for petitions pursuant to subsection (c). The petition must be filed prior to the end of the authorized agent's taxable year, and the petition must be granted or denied prior to the due date of the return without regard to extensions. If the petition is granted, credit will be claimed by the nonresidents for their share of the composite payments in the same manner and amount as permitted resident individuals under Section 100.5160.

Pursuant to this provision, the Zs' petition is not timely. However, the Zs can achieve a result equivalent to allowing them to claim a credit on their 2004 individual Illinois income tax return for taxes paid on their behalf on the composite return of COMPANY LLP by filing their individual return without the credit and also having the partnership file a claim for refund based on excluding Mr. Z from the composite return, and then remitting the refund to the Zs. Following this procedure, however, would require the filing and processing of two returns and two payments, rather than one of each, and could involve the assessment and request for abatement of late payment penalties for the Zs and other complications. Accordingly, allowing the Zs to claim a credit for taxes paid on their behalf by the partnership will clearly be the easiest method for all parties to achieve the correct result in this case. The petition is therefore granted.

In order to claim the credit, please enter the amount on line 17 of the Form IL-1040, Individual Income Tax Return, and attach to the return a copy of this letter and proof of the amount paid on behalf of the Zs by the partnership. Please send the return to me at the above address, and do not hesitate to call if I can be of further assistance.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton

Deputy General Counsel – Income Tax